

BEFORE THE PUBLIC UTILITIES COMMISSION  
OF THE STATE OF HAWAII

In the Matter of the Application of)  
SEA LINK OF HAWAII, INC. )  
For a Temporary Rate Increase. )  
\_\_\_\_\_ )

DOCKET NO. 2008-0133

ORDER APPROVING TEMPORARY FUEL SURCHARGE

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DIV. OF CONSUMER ADVOCACY  
DEPT. OF COMMERCE AND  
CONSUMER AFFAIRS  
STATE OF HAWAII

PUBLIC UTILITIES  
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FILED

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Docket No. 2008-0133

ORDER APPROVING TEMPORARY FUEL SURCHARGE

By this Order, the commission approves SEA LINK OF HAWAII, INC.'s ("Sea Link") Application for a Temporary Rate Increase, filed on June 30, 2008,<sup>1</sup> subject to certain conditions set forth herein. As a result, Sea Link is authorized to establish and assess a temporary fuel surcharge, until further order of the commission.

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<sup>1</sup>Application for a Temporary Rate Increase; Exhibits A - H; Verification; Affidavit of Deborah Daniells, CPA; Affidavit of Judith Neustadter Naone, Esq.; and Certificate of Service, filed on June 30, 2008 (collectively, "Application for a Temporary Rate Increase").

The Parties in this proceeding are Sea Link and the DEPARTMENT OF COMMERCE AND CONSUMER AFFAIRS, DIVISION OF CONSUMER ADVOCACY ("Consumer Advocate"), an ex officio party to this proceeding, pursuant to Hawaii Revised Statutes ("HRS") § 269-51 and Hawaii Administrative Rules ("HAR") § 6-61-62(a).

I.

Background

A.

Sea Link's Present Fares

Sea Link operates as a water carrier between Lahaina, Maui and Kaunakakai, Molokai. As explained by Sea Link:

Sea Link of Hawaii, Inc. started ferry service in 1986 at the request of Governor Waihee and DBED[T] to provide service between Molokai and Maui. At the time, pineapple had been phased out of Molokai and Maui had a labor shortage. Through a \$30,000 per month charter agreement with the State, Sea Link of Hawaii, Inc. agreed to transport workers at a greatly reduced rate to be shared by the employer and the employee. A side benefit was having regular service between the islands for residents and tourists on recreational trips.

In 1995, Governor Cayetano cancelled the contract forcing suspension of the service and most workers moved to Maui or quit their jobs. After two years of studies, the DOT made a request for proposals for any operators to take over the route. There were no operators willing to attempt this very marginal run. Sea Link of Hawaii, Inc. did start up again in 1995 on a limited schedule by using a smaller converted crew boat built in 1971, the Molokai Princess. At that time fuel was in the \$1 per gallon range.

Today, some eight years later, we continue to operate the same 37-year-old Molokai Princess. While small (100') and slow (17 knots), this vessel has averaged less than 1 day per year of cancellations because of weather . . . . We have always done our best to make the daily voyages as our commuting workers depend on us to get to work in the morning and to get home at night.

Application for a General Rate Increase; Exhibits I - K; Verification; Affidavit of Deborah Daniells, CPA; Affidavit of Judith Neustadter Naone; and Certificate of Service, filed on

July 11, 2008 (collectively, "Application for a General Rate Increase"), Exhibit J, at 1.<sup>2</sup>

Pursuant to its Tariff No. 2, Sea Link provides transportation service to two categories of passengers: Regular Passengers and Employee Commuter Passengers.<sup>3</sup> Regular Passengers are defined as passengers who are not Employee Commuter Passengers, while Employee Commuter Passengers are defined as residents of the island of Molokai who are traveling round-trip on a daily basis between the islands of Molokai and Maui for the purpose of verifiable employment.<sup>4</sup>

With respect to the pricing of Sea Link's passenger fares, Tariff No. 2 states in part:

B. PASSENGER TICKETING

a. Regular Passengers

. . . . .

b. Employee Commuter Passengers

An Employee Commuter program for passengers between Kaunakakai and Lahaina is in effect for persons living on Molokai and commuting to work on Maui. Ticket prices for the Employee Commuter program are established by Sea Link of Hawaii . . .

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<sup>2</sup>The acronym DBEDT refers to the State of Hawaii ("State"), Department of Business Economic Development and Tourism, while the acronym DOT refers to the State Department of Transportation.

<sup>3</sup>Tariff No. 2, Section II.

<sup>4</sup>Tariff No. 2, Section II.

D. PASSENGER PRICE LIST

All prices are one-way, in either direction. A round trip would double the price. Food and drink are not included in the ticket price.

a. Regular Passengers

	<u>Adults</u>	<u>Children</u>
Between Kaunakakai and Molokai	\$40.00	\$20.00

Coupon booklets of 6 coupons per booklet, one coupon good for passage between Kaunakakai and Lahaina, are available for purchase at \$185.00 for a booklet of 6 . . . .

b. Employee Commuter Passengers

Employees of participating employers are eligible for the Employee Commuter program. Ticket prices for Employee Commuter Passengers are established by the State of Hawaii and/or Sea Link of Hawaii and participating employers. Tickets for the Employee Commuter program will be honored only if the Employee Commuter Fare program supported by the State of Hawaii is in effect or if Sea Link of Hawaii elects to continue the program despite withdrawal of support from the State of Hawaii.

c. Taxes and Fees

There shall be added to all prices in this section of the Passenger Tariff, whether the prices are for adults, children, coupon booklets, or otherwise, Sea Link of Hawaii's pass through of gross revenue tax charges imposed on Sea Link of Hawaii by any governmental authority in any form including, but not limited to, gross excise tax and public utility fees.

E. CHILDREN

Those twelve (12) years of age or under as defined as Children. Children not accompanied by a person eighteen (18) years of age or older will not be permitted passage. Children under two (2) years of age and not occupying a seat (bab[ies in arms]) will travel free.

Tariff No. 2, Section II.

B.

Procedural Background

By its Application for a Temporary Rate Increase, filed on June 30, 2008, Sea Link seeks to revise its Tariff No. 2 by establishing and assessing a temporary fuel surcharge. By letter dated July 2, 2008, the commission informed Sea Link that it intended to hold the water carrier's Application for a Temporary Rate Increase in abeyance, pending the receipt of Sea Link's application for a general rate increase.

By response letter dated July 7, 2008, Sea Link noted in part:

Accordingly, I write now to update the Commission regarding Sea Link's intentions, and to respectfully ask for whatever consideration the Commission may be able to give so Sea Link can continue to serve the public by operating the Maui/Molokai ferry. Sea Link is working on its general rate increase application. Sea Link will also be asking the Commission to waive any new test year or other procedural requirements that may be deemed required.

Sea Link's letter dated July 7, 2008, at 2 (footnote and text therein omitted).

On July 11, 2008: (1) the commission requested the Consumer Advocate to promptly comment on Sea Link's request to establish and assess a temporary fuel surcharge;<sup>5</sup> and (2) Sea Link filed its Application for a General Rate Increase, seeking to establish and assess on a permanent basis

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<sup>5</sup>Commission's letter, dated July 11, 2008.

its requested fuel surcharge. On July 22, 2008, the Consumer Advocate filed its Statement of Position.<sup>6</sup>

C.

Proposed Fuel Surcharge

Exhibit A of the Application for a Temporary Rate Increase sets forth the language of Sea Link's proposed fuel surcharge, which Sea Link represents is identical to the fuel surcharge Hawaii Superferry, Inc. is authorized to assess by the commission. Meanwhile, Exhibit I of the Application for a General Rate Increase sets forth the specific amount of the proposed fuel surcharge, which is dependent upon Sea Link's price per gallon of fuel. As explained by Sea Link:

Exhibit "I" Projected dollar effect of fuel at a variety of costs per gallon. [Sea Link's] proposed fuel surcharge copies verbatim the fuel surcharge sought by the Superferry, and allowed by the Commission. The benchmark for the fuel surcharge is the 1998 price of \$1 per gallon. The fuel surcharge is calculated as a 2% increase in the passenger ticket price for each 10% increase in the cost of fuel above the benchmark. For example, at the approximate price now for a gallon of fuel (\$4.25) there would be an 85% surcharge of \$34.00. Thus, in this example, adding the \$34.00 fuel surcharge to the \$40.00 passenger ticket results in a total fare of \$74.00. This is clearly laid out in this Exhibit "I."

Application for a General Rate Increase, at 4.

In its Application for a Temporary Rate Increase, Sea Link states that "[t]he fuel surcharge would apply to all tickets, and all applicable taxes and fees will be assessed on

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<sup>6</sup>Consumer Advocate's Statement of Position; Exhibit A; and Certificate of Service, filed on July 22, 2008 ("Statement of Position").

the fuel surcharge."<sup>7</sup> However, in its Application for a General Rate Increase, Sea Link states that "[t]he fuel surcharge would apply to all tickets, except commuter program tickets, and all applicable taxes and fees will be assessed on the fuel surcharge."<sup>8</sup> With respect to the non-assessment of the proposed fuel surcharge on tickets for the Employee Commuter program, Sea Link explains:

Although [Sea Link] wants to retain its discretion regarding the discounted fares offered to participants in the employee commuter program, [Sea Link] at this time is not seeking the authority to assess a fuel surcharge to the substantially discounted fare offered to those residents of Molokai participating in the employee commuter program.

Application for a General Rate Increase, at 2 n.1.

D.

Sea Link's Position

Sea Link cites to the following factors in support of its request to temporarily increase its rates by establishing and assessing a fuel surcharge:

1. The Price of Fuel has Risen Astronomically:

There has been a rapid and substantial increase in the cost of fuel, which reflects a trend of escalating fuel costs.<sup>9</sup> Sea Link's fuel costs in 2007 were approximately \$474,000, and

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<sup>7</sup>Application for a Temporary Rate Increase, at 2.

<sup>8</sup>Application for a General Rate Increase, at 3.

<sup>9</sup>Application, Exhibit B, Summary of Newspaper Articles.

its projected fuel costs for 2008 are approximately \$826,000.<sup>10</sup> "Sea Link has been hit hard by the financial burdens imposed by the unprecedented and extraordinary recent fuel cost increases."<sup>11</sup>

2. Sea Link Continues to Offer Greatly Reduced Fares to Molokai Commuters: Sea Link continues to offer greatly reduced fares to Molokai residents commuting to Maui for jobs, as allowed by its Tariff No. 2, regarding Employee Commuter Passengers. While DBEDT previously subsidized the Employee Commuter Program, "DBEDT stopped the program effective July 1, 1996. [Sea Link's] last general rate increase was during the time it had been receiving the DBEDT subsidy, and when fuel was but \$1.00 per gallon."<sup>12</sup>

3. Fewer Visitors: Fewer visitors are traveling to the island of Molokai, with Molokai Ranch recently shutting down its operations and closing its visitor attractions. In the near future, Sea Link sees no basis for projecting that passenger numbers will be increasing to any significant extent.

4. Sea Link's Costs Have Risen: Sea Link's last fare increase was in 1996. In addition to the increases in its fuel costs, Sea Link has also recently greatly increased its charter hire expenses. "[T]he total annual charter hire costs for year 2007 and projected for year 2008 are approximately

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<sup>10</sup>Application, Exhibit D, Annual Financial Report for 2007; and Exhibit E, Projected Annual Financial Report for 2008.

<sup>11</sup>Sea Link's letter, dated July 7, 2008, filed on July 8, 2008, at 1.

<sup>12</sup>Application for General Rate Increase, at 6; see also Application for a Temporary Rate Increase, at 5.

\$186,000. This is a substantial increase over the charter hire costs for year 2006 (approximately \$48,000.00, see Exhibit 'D')."<sup>13</sup>

"Moreover, [Sea Link] is facing the increased costs of operating an increasingly older vessel - built in 1971. These costs include parts, labor, and downtime expense due to locating obsolete parts."<sup>14</sup>

5. Financial Contingencies: "Without a rate increase, there is a strong likelihood [Sea Link] will lose a substantial sum of money this year and for the next few years. Setting aside funds for engine reserves simply does not cover the extraordinary costs associated with rising fuel expenses and anticipated decreased ridership."<sup>15</sup> Thus, it is imperative that Sea Link have the financial strength to maintain and improve the vessel, and protect itself against unexpected risks in the next few years.

6. Financial Need: "As is evident from the financial exhibits attached to these applications, absent an immediate rate increase in the form of the proposed fuel surcharge, [Sea Link] faces a serious threat to its continued ability to provide water carrier services between the Islands of Maui and Molokai. [Sea Link's] financial advisors had initially recommended also seeking an increase in passenger

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<sup>13</sup>Application for a General Rate Increase, at 7 (footnote and text therein omitted); see also Application for a Temporary Rate Increase, at 6 (footnote and text therein omitted).

<sup>14</sup>Application for a General Rate Increase, at 8.

<sup>15</sup>Application for a General Rate Increase, at 8; and Application for a Temporary Rate Increase, at 6.

ticket prices; however, [Sea Link] believes at this time the ability to assess a fuel surcharge will be sufficient to enable it to continue serving the Maui/Molokai ferry route, and will enable it to continue offering substantially discounted fares to employee commuters, and will afford it the same flexibility that, for example, the Superferry has with respect to its passenger fares."<sup>16</sup>

E.

Consumer Advocate's Position

By its Statement of Position filed on July 22, 2008, the Consumer Advocate "recommends that the Commission grant Sea Link's request for temporary and general rate increase on an expedited basis."<sup>17</sup> In support of its position, the Consumer Advocate states:

1. Sea Link is seeking authority to implement a new tariff provision, i.e., a new rate in the form of a fuel surcharge; it is not seeking to implement changes to its existing rates.<sup>18</sup> Thus, it is not clear as to why Sea Link is required to file a general rate application to implement the proposed fuel adjustment surcharge on a temporary or permanent basis.

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<sup>16</sup>Application for a General Rate Increase, at 8-9 (footnotes and text therein omitted); see also Application for a Temporary Rate Increase, at 6-7 (footnotes and text therein omitted).

<sup>17</sup>Consumer Advocate's Statement of Position, at 30.

<sup>18</sup>The Consumer Advocate cites to HRS § 271G-17(d) (new rate, fare, or charge).

2. The commission has the authority under HRS § 271G-17 to expeditiously act on Sea Link's request for temporary rate relief without waiting for the filing of a general rate application or the holding of a public hearing. Specifically, the commission, pursuant to HRS § 271G-17(e), has the discretion to authorize the requested rate adjustment on a temporary basis upon a determination of probable entitlement and financial need by Sea Link.<sup>19</sup> Moreover, HRS chapter 271G does not require the commission to conduct a public hearing. Instead, HRS § 271G-17(b) simply requires water carriers to provide forty-five days' notice of the proposed changes and the effective date upon which such change is to take effect.

3. "Sea Link's request seeks Commission authority to implement a new tariff provision. Thus, although the request will result in an increase to the rates that Sea Link charges for the transport of passengers between the islands of Maui and Molokai, the request does not seek approval to modify the existing published fares/ticket prices. More importantly, the request is made to ensure that Sea Link is able to continue providing the necessary transportation of passengers between Maui and Molokai islands."<sup>20</sup>

4. While "[t]here is no dispute that any surcharge, which allows a regulated entity to recover, or pass through changes in the cost of one expense from the cost recognized in setting the entity's base rate(s) constitutes

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<sup>19</sup>The Consumer Advocate also cites to HRS § 271G-17(b) (short notice filings).

<sup>20</sup>Consumer Advocate's Statement of Position, at 7.

single-issue ratemaking[,] "<sup>21</sup> the focus must be on whether the request is necessary and thus reasonable, and the commission can allow single-issue ratemaking to occur under extraordinary circumstances.

5. Sea Link has demonstrated probable entitlement and financial need to receive commission authorization to implement the proposed fuel adjustment surcharge on a temporary and permanent basis. Of particular note:

A. Sea Link has demonstrated that the impact of the recent changes in the price of fuel warrants the establishment of the requested fuel surcharge outside the context of a general rate case review. Sea Link's "passengers consist of visitors to the islands of Maui and Molokai and residents who need to get to their place of employment on the other island or visit family on the other island. The type of carriage provided by Sea Link is unique and provides relatively inexpensive transportation for Molokai residents who work on Maui."<sup>22</sup>

B. Sea Link's revenues are expected to decrease with the recent closure of Molokai Ranch and the decline in the State's economy.

C. The increase in Sea Link's fuel expenses is expected to have a significant impact on its financial results and such increases are expected to continue into the near future. "Thus, it appears reasonable to allow Sea Link to implement the proposed fuel surcharge since the recent increases in

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<sup>21</sup>Consumer Advocate's Statement of Position, at 13.

<sup>22</sup>Consumer Advocate's Statement of Position, at 20.

the price of fuel appears to be the primary reason for the increase in Sea Link's projected increased operating expense."<sup>23</sup>

D. Sea Link has demonstrated that without the authorization to implement the proposed fuel adjustment on ticket prices, it will experience significant operating losses, which will result in financial harm to the water carrier. "The fuel surcharge is necessary for Sea Link to have a reasonable opportunity to recover the increase[d] fuel expenses incurred to continue providing the inter-island water transportation service required by passengers seeking to get to the other island, in particular the residents of Molokai who rely on Sea Link's service to get to their place of employment on Maui."<sup>24</sup>

E. Sea Link's existing rates are based on the operating ratio methodology, and not on the rate of return methodology. "Thus, there is no need to adjust the overall rate of return to recognize the lower financial risk that is expected to result from the Commission's approval of Sea Link's request to implement the proposed fuel adjustment surcharge. Moreover, . . . the proposal is intended to simply

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<sup>23</sup>Consumer Advocate's Statement of Position, at 23.

<sup>24</sup>Consumer Advocate's Statement of Position, at 24 (footnote and text therein omitted).

enable Sea Link to recover the changes in fuel costs resulting from the recent significant changes in the per gallon price of fuel."<sup>25</sup>

The Consumer Advocate also makes the following comments:

1. "The Consumer Advocate recommends that Sea Link clarify in the proposed tariff that the fuel surcharge will be added to the published rates at the time of ticket purchase, which includes the individual fare ticket and the coupon book fares that include six one-way coupons and are purchased for travel to and from Maui and Molokai. The surcharge will not be applied to the price of commuter tickets. The Consumer Advocate understands that the coupon books are separate from the commuter tickets for the employer commuter program. Furthermore, the Consumer Advocate notes that, at this time, Sea Link is not proposing to add a fuel surcharge to the substantially discounted tickets in the employer commuter program, since employers use the employer commuter program as a means by which their employees may commute between the islands of Maui and Molokai for work."<sup>26</sup>

2. The Consumer Advocate discussed the need to clarify certain language in the fuel surcharge tariff, and as a result, "the Consumer Advocate understands that Sea Link will be submitting revised tariff language that clarifies the intent of the application of the proposed fuel surcharge and a revised Exhibit I to illustrate

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<sup>25</sup>Consumer Advocate's Statement of Position, at 25.

<sup>26</sup>Consumer Advocate's Statement of Position, at 25-26.

the application of the proposed fuel surcharge."<sup>27</sup> Specifically, the Consumer Advocate recommends that the language in the tariff and on Exhibit I be changed to state "for each 10% increase, or portion thereof, in the cost of fuel above the benchmark price of \$1 per gallon."<sup>28</sup>

3. Sea Link's proposal to not refund to customers the monies that are collected pursuant to the temporary rate adjustment is not reasonable, but the issue is moot if the commission authorizes Sea Link to implement the proposed fuel surcharge as a new tariff change.

## II.

### Discussion

HRS § 271G-16 provides in relevant part:

**Rates, fares and charges of common carriers by water.** (a) It shall be the duty of every water carrier of passengers to provide safe and adequate service, equipment, and facilities for the transportation of passengers and to establish, observe, and enforce just and reasonable rates, fares, and charges, and just and reasonable regulations and practices relating thereto, and to the issuance, form, and substance of tickets, the carrying of personal, sample, and excess baggage, the facilities for transportation, and all other matters relating to or connected with the transportation of passengers.

(b) It shall be the duty of every water carrier of property to provide safe and adequate service, equipment, and facilities for the transportation of property and to establish, observe, and enforce just and reasonable rates,

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<sup>27</sup>Consumer Advocate's Statement of Position, at 27. On July 28, 2008, Sea Link filed its Supplement to Application, in response to the Consumer Advocate's comments.

<sup>28</sup>Consumer Advocate's Statement of Position, at 26-27.

charges, and classifications, and just and reasonable regulations and practices relating thereto, and to the manner and method of presenting, marking, packing, and delivering property for transportation, the facilities for transportation, and all other matters relating to or connected with the transportation of property.

(c) All charges made for any service rendered by any water carrier in the transportation of passengers or property or in connection therewith shall be just and reasonable, and every unjust and unreasonable charge for such service or any part thereof, is prohibited and declared to be unlawful. It shall be unlawful for any water carrier to make, give, or cause any undue or unreasonable preference or advantage to any particular person, locality, region, district, island, or description of traffic, in any respect whatsoever; or to subject any particular person, locality, region, district, island, or description of traffic to any unjust discrimination or undue or unreasonable prejudice or disadvantage in any respect whatsoever; provided that this subsection shall not be construed to apply to discrimination, prejudice, or disadvantage to the traffic of any other carrier of whatever description.

(d) Any person or body politic may make complaint in writing to the commission that any such rate, fare, charge, rule, regulation, or practice, in effect or proposed to be put into effect, is or will be in violation of this section. Whenever, after hearing, upon complaint or in an investigation on its own initiative, the commission shall be of the opinion that any individual rate, fare, or charge, demand, charged, or collected by any common carrier or carriers by water for transportation, or any rule, regulation, or practice whatsoever of the carrier or carriers affecting such rate, fare, or charge or the value of the service thereunder, is or will be unjust or unreasonable, or unjustly discriminatory or unduly preferential or unduly prejudicial, it shall determine and prescribe the lawful rate, fare, or charge or the maximum or minimum or maximum and minimum rate, fare, or charge thereafter to be observed, or the lawful rule, regulation, or practice thereafter to be made effective.

(e) In the exercise of its power to prescribe just and reasonable rates, fares, and charges for the transportation of passengers or property by water carriers, and to prescribe

classifications, regulations, and practices relating thereto, the commission shall give due consideration, among other factors, to the effect of rates upon the movement of traffic by the carrier or carriers for which the rates are prescribed; to the need, in the public interest, of adequate and efficient transportation service by the carriers at the lowest cost consistent with the furnishing of the service; and to the need of revenues sufficient to enable the carriers, under honest, economical, and efficient management, to provide the service.

(f) Nothing in this section shall be held to extinguish any remedy or right of action not inconsistent herewith.

HRS § 271G-16.

HRS § 271G-17 states in relevant part:

**Tariffs of water carriers.** (a) Every water carrier shall file with the public utilities commission, and print, and keep open to public inspection, tariffs showing all the rates, fares, and charges for transportation, and all services in connection therewith, of passengers or property. The rates, fares, and charges shall be stated in terms of lawful money of the United States. The tariffs required by this section shall be published, filed, and posted in such form and manner, and shall contain such information as the commission by regulations shall prescribe; and the commission may reject any tariff filed with it which is not in consonance with this section and with the regulations. Any tariff so rejected by the commission shall be void and its use shall be unlawful.

(b) No change shall be made in any rate, fare, charge, or classification, or any rule, regulation, or practice affecting the rate, fare, charge, or classification, or the value of the service thereunder, specified in any effective tariff of a water carrier, except after forty-five days' notice of the proposed change filed and posted in accordance with subsection (a); provided that changes to a fuel surcharge approved by the commission may be made after thirty days' notice of the proposed change filed and posted in accordance with subsection (a). The notice shall plainly state the change proposed to be made and the time when it will take effect.

The commission may in its discretion and for good cause shown allow the change upon notice less than that herein specified or modify the requirements of this section with respect to posting and filing of tariffs either in particular instances or by general order applicable to special or peculiar circumstances or conditions.

(c) No water carrier shall engage in the transportation of passengers or property unless the rates, fares, and charges upon which the same are transported by the carrier have been filed and published in accordance with this chapter.

(d) Whenever there is filed with the commission any schedule stating a new rate, fare, or charge, for the transportation of passengers or property by a water carrier or any rule, regulation, or practice affecting such rate, fare, or charge, or the value of the service thereunder, the carrier may on its own initiative, or shall by order of the commission served prior to the effective date of the schedule, concurrently file a pro forma statement of account which shall be prepared under the same form and in the same manner as prescribed by the commission's uniform system of accounts.

The commission may upon complaint of any interested person or upon its own initiative at once and, if it so orders, without answer or other formal pleading by the interested carrier or carriers, but upon reasonable notice, enter upon a hearing concerning the lawfulness of the rate, fare, or charge, or the rule, regulation, or practice, and pending the hearing and the decision thereon the commission, by delivering to the carrier or carriers affected thereby a statement in writing of its reasons therefor, may suspend the operation of the schedule and defer the use of the rate, fare, or charge, or the rule, regulation or practice. From the date of ordering a hearing to investigate the lawfulness of the rate, fare, or charge, the commission shall have up to six months to complete its investigation. If the commission fails to issue a final order within the six-month period then the changes proposed by the carrier shall go into effect. At any hearing involving a change in a rate, fare, charge, or classification, or in a rule, regulation, or practice, the burden of proof shall be upon the carrier to show that the proposed changed rate, fare, charge, classification, rule, regulation, or practice, is just and reasonable.

(e) When a rate increase application is filed, the commission may in its discretion and after public notice, and upon showing by a water carrier of probable entitlement and financial need, authorize temporary increase in rates, fares, and charges; provided that the commission shall by order require the carrier to keep accurate account in detail of all amounts received by reason of such increase, specifying by whom and in whose behalf such amounts are paid, and upon completion of the hearing and decision by further order require the interested carrier to refund, with interest, to the person in whose behalf such amounts were paid, such portion of such increased rates or charges by its decision shall be found not justified. The interest to be paid shall be the rate of return authorized in the last general rate case proceedings.

HRS § 271G-17 (emphasis added).

The granting of temporary rate relief by the commission for Sea Link is not without precedent. In In re Sea Link of Hawaii, Inc., Docket No. 96-0202 ("Docket No. 96-0202"), the commission approved Sea Link's application for a temporary rate increase; specifically, a sixty percent increase in its adult one-way passenger fare, from \$25.00 to \$40.00; its child one-way passenger fare, from \$12.50 to \$20.00; and its fare for six coupon booklets, from \$115.00 to \$185.00.<sup>29</sup> The commission found that, pursuant to HRS § 271G-17(e), Sea Link adequately demonstrated a financial need for its requested temporary rate increase and the probability of entitlement to the rate increase:

. . . . Without the requested increase, Sea Link will, in all probability, incur a net loss of a substantial amount in 1996, with a shut-down of its operations a possibility. However, with the requested increase, Sea Link

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<sup>29</sup>Docket No. 96-0202, Decision and Order No. 14791, filed on July 18, 1996.

estimates that it may derive a net profit of \$24,533. The continued operation of Sea Link, particularly as a commuter water carrier, is important to the economy of Molokai. We, thus, conclude that Sea Link's request for a temporary rate increase should be granted.

Docket No. 96-0202, Decision and Order No. 14791, at 4.

Thereafter, in In re Sea Link of Hawaii, Inc., Docket No. 96-0220 ("Docket No. 96-0220"), the commission approved Sea Link's application for a general rate increase, which in effect, approved on a permanent basis the sixty percent increase in Sea Link's passenger fares.<sup>30</sup> As noted by the commission in Dockets No. 96-0202 and No. 96-0220, the increase in Sea Link's passenger fares was triggered in large part by the ceasing of state subsidies to the water carrier, effective from July 1996.<sup>31</sup>

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<sup>30</sup>Docket No. 96-0220, Decision and Order No. 14870, filed on August 9, 1996.

<sup>31</sup>"The subsidy supported Sea Link's program of providing transportation services to Molokai residents commuting to work on Maui at fares substantially below those charged to Sea Link's other passengers. The subsidy was provided under successive short-term contracts with DBEDT from 1987 to June 30, 1996 . . . . Effective July 1, 1996, DBEDT ceased providing any subsidy to Sea Link." Docket No. 96-0202, Decision and Order No. 14791, at 2; see also Docket No. 96-0220, Decision and Order No. 14870, at 2.

Despite the increase in Sea Link's passenger fares authorized by the commission in Dockets No. 96-0202 and No. 96-0220, Sea Link, by letter dated September 17, 1996, subsequently informed the commission that due to its financial condition, it was suspending its ferry operations between the islands of Maui and Molokai, effective October 1, 1996.

Sea Link, in its past two applications for temporary rate increases, sought to increase the base price of its passenger fares.<sup>32</sup> Here, by contrast, Sea Link, by its Application for a Temporary Rate Increase, seeks to establish and assess a fuel surcharge without any proposed increase in the base price of its passenger fares (adult, child, coupon booklet). In addition, by its Application for a General Rate Increase, Sea Link seeks to establish and assess the fuel surcharge on a permanent basis, in lieu of any proposed increase in the base price of its passenger fares. Moreover, Sea Link proposes to exempt Employee Commuter Passengers, as that term is defined in Tariff No. 2, from the fuel surcharge.

For 2007, Sea Link reported a net operating loss of \$273,247, based on total operating revenues of \$1,611,883, other income of \$6, and total operating expenses of \$1,885,136.<sup>33</sup> Its fuel expense for 2007 was \$474,523.<sup>34</sup> For the four-month period from January to April 2008, Sea Link reported a net operating loss of \$95,308, based on total operating revenues of \$596,710,

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<sup>32</sup>Docket No. 96-0202; and In re Sea Link of Hawaii, Inc., Docket No. 6941 ("Docket No. 6941"). In Docket No. 6941, Sea Link, on April 4, 1991, filed an application for a temporary rate increase and an application for a general rate increase. More than seven months later, by Decision and Order No. 11352, filed on November 15, 1991, the commission approved Sea Link's request for a general increase in its passenger fares, thereby rendering moot Sea Link's request for a temporary rate increase.

<sup>33</sup>Application for a Temporary Rate Increase, Exhibit D, Annual Financial Report for 2007. The commission has utilized the operating ratio methodology in Sea Link's past two general rate cases in approving the requested increase in prices to the water carrier's base passenger fares. See Docket No. 96-0220; and Docket No. 6941.

<sup>34</sup>Application for a Temporary Rate Increase, Exhibit D, Annual Financial Report for 2007.

and total operating expenses of \$692,108. Its fuel expense during this four-month period was \$206,536,<sup>35</sup> and its total projected fuel expense for 2008 is \$826,536.<sup>36</sup>

The financial information provided by Sea Link suggests that without immediate rate relief, Sea Link will continue to operate at a loss, and its precarious financial condition, to a large extent, is attributable to the recent increase in the water carrier's fuel costs.<sup>37</sup>

Data maintained by the commission shows that between the twelve-month period from June 2007 to June 2008, the average per gallon price of crude oil and regular gasoline within the State has steadily and rapidly increased.<sup>38</sup> While Sea Link has taken specific action to reduce its fuel costs, namely, its recent decision to temporarily suspend three of its weekly round trip sailings,<sup>39</sup> it appears evident that the magnitude of the recent increases in the price of fuel has

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<sup>35</sup>Application for a Temporary Rate Increase, Exhibit F, Financial Report for the Period January to April 2008.

<sup>36</sup>Application for a Temporary Rate Increase, Exhibit E, Projected Annual Financial Report for 2008.

<sup>37</sup>Application for a Temporary Rate Increase, Exhibit B, Summary of Newspaper Articles.

<sup>38</sup>Pursuant to State law, the commission is responsible for administering the Petroleum Industry Monitoring, Analysis, and Reporting ("PIMAR") Program. As part of its efforts, the commission maintains and updates a website that reports price information on crude oil and regular gasoline under the PIMAR Program. The commission takes official notice of the data maintained by the commission as part of the PIMAR Program. See Regular Gasoline - Weekly Price Comparison/HI Statewide/Twelve (12) Months Ending June 15, 2008.

<sup>39</sup>See Sea Link's Transmittal Letter, dated May 28, 2008, filed on May 29, 2008; and Tariff Order, filed on June 24, 2008.

detrimentally affected the water carrier's ability to continue providing inter-island water carrier service between Maui and Molokai, in the absence of timely rate relief. Moreover, the recent increases in the price of fuel largely results from world events beyond Sea Link's control.

Sea Link represents that without immediate and temporary relief primarily due to the rapid increase in the price of fuel, it will be unable to continue serving the Maui/Molokai ferry route.<sup>40</sup> Based on Sea Link's financial need and its potential abandonment of service, the commission finds that Sea Link is probably entitled to an increase in its rates, in the form of a temporary fuel surcharge, effective from the date of this Decision and Order. Sea Link shall comply with the refund provisions set forth in HRS § 271G-17(e), in the event that a partial or full refund is later ordered by the commission.<sup>41</sup>

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<sup>40</sup>Sea Link's letter, dated July 7, 2008, filed on July 8, 2008, at 2; see also Application for a Temporary Rate Increase, at 6-7; and Application for a General Rate Increase, at 8-10, and Exhibit J.

<sup>41</sup>Commission's letter, dated July 2, 2008, at 3. As part of its Application for a General Rate Increase, Sea Link seeks to waive the refund procedures set forth in HRS § 271G-17(e), stating that such procedures are too burdensome and difficult. Instead, Sea Link proposes the refund procedures set forth in its Application for a Temporary Rate Increase, which states in part that any refund "should be accomplished by re-installing the prior rate for the period necessary to accomplish the refund, and then permitting [Sea Link] to move to the new approved tariff rate. An attempt to refund payments to the specific persons who purchased tickets during the temporary rate increase period would not be practical or cost effective." Application for a Temporary Rate Increase, at 7.

The commission denies Sea Link's request to waive the refund procedures set forth in HRS § 271G-17(e). The commission lacks

### III.

#### Orders

##### THE COMMISSION ORDERS:

1. Sea Link's Application for a Temporary Rate Increase, filed on June 30, 2008, is approved.

2. Sea Link is authorized to establish and assess a temporary fuel surcharge, effective from the date of this Decision and Order, as set forth in its Application for a General Rate Increase, which exempts from the fuel surcharge Employee Commuter Passengers, as that term is defined in Tariff No. 2.

3. Sea Link shall comply with the refund provisions set forth in HRS § 271G-17(e), in the event that a partial or full refund is later ordered by the commission.

4. Sea Link shall promptly submit its revised tariff sheets, with the applicable issued and effective dates, that incorporate its temporary fuel surcharge approved by the commission herein, including the revisions noted by the Consumer Advocate.

5. Sea Link's request, as set forth in its Application for a General Rate Increase, filed on July 11, 2008, to waive the refund procedures set forth in HRS § 271G-17(e), is denied.

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the statutory authority to waive the requirements of HRS § 271G-17(e). Moreover, under its proposed refund procedures, it appears that Sea Link would not refund any monies to its affected passengers, in the event that such a refund is subsequently ordered by the commission.


6. The failure to comply with Ordering Paragraphs No. 3 or No. 4, above, may constitute cause to void this Decision and Order, and may result in further regulatory action as authorized by State law.

DONE at Honolulu, Hawaii AUG - 1 2008.


PUBLIC UTILITIES COMMISSION  
OF THE STATE OF HAWAII

By:   
Carlito P. Caliboso, Chairman

By:   
John E. Cole, Commissioner

  
By: Leslie H. Kondo, Commissioner

APPROVED AS TO FORM:

  
Michael Azama  
Commission Counsel

2008-0133.laa

CERTIFICATE OF SERVICE

The foregoing order was served on the date of filing by mail, postage prepaid, and properly addressed to the following parties:

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